

**Evaluations: Child and Family's  
Best Interest and  
Use in Court Proceedings**

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## **Native American Topic-Specific Monograph Series**

### **Purpose**

The purpose of the Native American Topic-Specific Monograph project is to deliver a variety of booklets that will assist individuals in better understanding issues affecting Native communities and provide information to individuals working in Indian Country. The booklets will also increase the amount and quality of resource materials available to community workers that they can disseminate to Native American victims of crime and the general public. In addition to the information in the booklet, there is also a list of diverse services available to crime victims and resources from the Department of Justice.

### **Acknowledgements**

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## **Evaluations: Child and Family's Best Interest and Use in Court Proceedings**

"First I had to go to the hospital, now I have to go see a psychologist and take tests; do people think I'm crazy? I should never have told anyone what happened to me." A child who has been the victim of a crime may have these kinds of thoughts. When a child is the victim of a crime, their behavior may change. The adults close to the child may notice that the child is acting "different" and want to know the reason for the change in behavior.

In child abuse cases, child protection services (CPS) workers, Indian Child Welfare Act (ICWA) workers, law enforcement personnel, and prosecutors may all be interested in receiving a "psychological evaluation" of the child in order to plan for the child's recovery and protection. Mental health professionals are often requested to perform such evaluations and convey the results to the requesting agency. Evaluation of the psychological effects of crime victimization is a difficult and complex process.

The focus of this paper is to help parents, extended family, CPS workers, ICWA workers, prosecutors, and judges understand more about a psychological evaluation, especially when it is used in Native American communities with Native American children. The following sections will explain what kinds of professionals perform psychological evaluations, what an evaluation consists of, the benefits and limits of psychological evaluations for victims of crime, and the roles of mental health professionals in addition to performing evaluations.

### **Who Performs Psychological Evaluations?**

Many people assume that there is one type of evaluation or test that a mental health professional can perform to show the harm done to a victim as the result of a crime. However, the term "psychological evaluation" is actually more complex. The first consideration is who will perform the evaluation? Psychologists (M.A., Ph.D., Ed.D.) are trained to administer and interpret psychological tests, including intelligence and personality tests. Some psychiatrists (M.D.) may have training in psychological testing, however this type of training is not emphasized in psychiatric training. Social Workers ( B.S.W., M.S.W.) generally are not trained in evaluation and assessment.

Reservation communities may not have access to a person who is formally trained in administering intelligence or personality tests. The availability of mental health professionals may therefore, limit your choice of who performs an evaluation.

### **Why Perform Psychological Evaluations?**

Why have a psychological evaluation performed at all? Is it something we just do because everyone else, everywhere else does it? Does it serve a purpose? How can you tell a child what is going to happen with this psychologist or mental health worker? What do you say to the child who asks if they have to see a doctor because they are crazy?

It is assumed that when a child is placed in a harmful or hurtful situation, like being abused, the child is affected in some way. Children may be fearful and not want to go anywhere, they may cry a great deal, they may not eat, or eat too much, and they may start wetting the bed or having nightmares. They may get into fights; they may start doing poorly in school or they may feel so bad that they want to kill themselves.

There may be a wide range of reasons for seeking an evaluation:

- to provide for specialized care that the victim may need,
- to provide additional evidence to justify removal of an abused child from the home,
- to provide evidence in a criminal trial,
- to identify and treat problems resulting from the crime,
- to assess a child victim's ability to protect themselves in the future,
- to show that a victim could not have consented to a sexual act,
- to help determine whether admission to an inpatient treatment program is necessary.

With so many possible reasons for referring a victim for a psychological evaluation, it is important that the person or agency clearly state the reason for the referral and the type of information that they would like the evaluation to provide.

### **The Benefits of Psychological Evaluations for Crime Victims**

Of all the reasons listed above, perhaps the most important one is not listed, an evaluation which is performed for the victim's sake. We know that victims have many different feelings and reactions as the

result of being victimized. We have no way to predict which victims will suffer what type of psychological harm as the result of victimization.

Children who have been sexually abused, for example, may act in many different ways; they may withdraw and become depressed or act in seductive ways. They may dislike physical touch or react in the opposite way by "being all over" other children or adults. The psychological effects of being hurt or victimized frequently include:

- low self-esteem (not feeling good about themselves, like saying that they are bad or ugly or no good),
- feelings of worthlessness (like they do not deserve anything good),
- powerlessness,
- feeling like they cannot make decisions and always want attention,
- having feelings of guilt and shame (as if they are to blame for what happened to them),
- having feelings of anger, and
- developing an identity as a victim (feeling and acting like a victim all the time).

The concept of developing an identity as a victim is difficult to explain because it does not translate into most Native languages. However, a person who develops such an identity may be seen as vulnerable and become victimized again.

These consequences can cause life-long problems. In order to prevent this type of psychological damage to a child sexual abuse victim, caregivers frequently request a psychological evaluation of the child. The evaluation, it is hoped, will identify whether the child has any current problems and whether the child will develop future problems as the result of their abuse. The evaluation should recommend therapy if it is needed so the victim is able to be a healthy member of their community.

Frequently the person or agency requesting an evaluation is not sure what information they hope the evaluation will reveal. Maybe someone, somewhere says to get a "psychological" when a child is abused. However, it is important to inform the mental health professional conducting the evaluation of its purpose to provide the best results.

### **How are Psychological Evaluations Conducted or Done?**

Over the years psychologists have developed a number of "tests" or instruments to measure and assess many psychological factors. There

are tests to measure intelligence and learning progress. There are tests that will tell your personality traits, such as whether you are shy or outgoing. There are tests to measure whether someone is mentally unstable or not, whether they look like a person without a conscience, a person psychologists call a sociopath. Tests can help determine whether and to what degree a person has depression or anxiety, whether they are hyper and impulsive or inattentive and spacey. There are literally hundreds of psychological assessment instruments that measure everything from infant development to memory in the elderly.

The availability of such a range of assessment tools may make it seem as though psychologists can produce a number to measure just about anything. This is kind of true. The tests can give an idea of what is going on. These numbers are based on comparing the child's results with other people who took the "sample test."

The "sample test" is what professionals use when they are developing a way to measure people psychologically. When the people who make tests want to try them out to see if they are good, they give the tests to many different people. In this way they can judge whether a test which is supposed to measure something like depression really does measure depression.

However, Native American people are usually not part of the group that takes the sample test. So, sometimes these tests do not work as well on Native American people as they do for non-Native people. Some tribal beliefs may sound odd to a psychologist who is giving the test. For example, most people have heard of the inkblot test. In this test, a person is shown a card with a picture made by a blot of ink and asked to describe what they see. Some Native American people may see spiritual figures or describe the picture in terms that reflect their tribe's cultural beliefs. It is important that the person who gives the tests is familiar with the tribal beliefs and customs of the tribal person taking the test. That way, the professional giving the test will be able to evaluate the results appropriately.

Even if the tests given were not developed with Native American people in the sample, they are still useful. A good clinician can often use such tests to help clarify a situation or diagnosis or to suggest further problem areas for exploration.

### **Clinical Evaluations**

The clinician may use the test to begin to form some ideas about

what and where the problem is, but will use clinical judgment to get better impressions of the person. The clinician will not only use the numbers and the clinician will not rely *totally* on psychological testing. A clinician may also perform what is known as a "clinical evaluation," an evaluation based on the evaluator's skill in interviewing the client. This type of evaluation is an important way of forming an impression of the client's problem areas, their strengths, and how well they are in general.

When a child is involved, other people may also be interviewed such as parents, caregivers, aunts, uncles, grandparents, and teachers. The clinician attempts to gain a complete picture of the child's life, past and present, by using the information from the child's viewpoint, information from how the child acted with the clinician, and information from extended family or others in frequent contact with the child (e.g., clan relatives).

The mental health worker or clinician gives a picture of what the child looks like psychologically. The psychological evaluation is different from a school evaluation. When a school wants to check how a student is doing, they will test the student to see how well the student has mastered reading, writing, and math skills. They test students by giving the child things to read, write, or figure out with math. Then, they compare the student's results with other children in the same grade and tell the student how s/he is doing relative to others in their grade and what they expect the child to be doing in that grade level.

A psychological evaluation is like this kind of school evaluation in some ways because it will tell us how this child is doing at that time and compared to other children of the same gender and age. But the tests that the mental health professional gives are not like math tests that just see whether the child can solve problems. The clinician tries to determine what the child was like before the victimization and then compare the child to him/herself after the victimization. That is why the clinician will interview people or ask them to complete surveys about the child. In addition, the clinician tries to determine whether the child is acting differently from other children in the community who have not been victims. That is why the clinician will make observations or use the surveys that have been used with other children of the same age.

It is important that the person performing the psychological evaluation be familiar with American Indian culture and traditions, especially the child's specific tribal traditions. A non-Native mental health professional may think about things differently than a Native person. The professional's training may not have included information

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about Native American culture or beliefs. For example, maybe the child talks about grandma, who has passed away, in a way that is normal in her community but unusual in a non-Indian community. That could make the child look different to the clinician if the clinician was not familiar with Native American culture. It is vital that the mental health professional working with tribal people knows the differences between tribal and non-tribal cultures.

### **Considerations in Psychological Evaluations for Children**

A psychological evaluation can help to identify particular problems that a victim is experiencing. An evaluation may be able to identify whether a person is psychotic (or some people will use the word "crazy"), suicidal, or a danger to others. A psychological evaluation may not be able to tell you definite, specific types of information, for example, was a child abused, who abused the child, or details of the abuse. It may not answer the question of whether the child is able to testify in court or whether the child is telling the truth, or whether the child is talking about abuse that occurred in the past or current abuse. While these are important questions, the law enforcement people investigating the crime will conduct their own investigation to discover the answers to these questions. Clinicians have training and assessment instruments available to them to help answer some types of questions, but psychology remains an imperfect science and cannot **see** things that are hidden or invisible, like inside someone's brain. Mental health professionals *can* provide important input and help to law enforcement.

A clinician may not be able to say that a child has been abused but the clinician can say that the child is behaving in a way that is similar to how other children who have been abused behave. Or the clinician can tell the prosecutor that the child is very fearful of the person who hurt him and will probably not be able to talk in court in front of that person.

### **Dialogue with Referring Agencies**

Dialogue between the referring agencies and the person performing the evaluation is essential. The referring agency, whether it is the court, CPS, or the parents or relatives, may expect more than the evaluation can provide. For example, the court may want to know if the child will be a good witness in the trial. The clinician performing a psychological evaluation can say that the child was willing to talk about the abuse in the clinician's office and seemed to be able to talk without becoming too upset. However, testifying on the witness stand in a courtroom is a different situation. The clinician can offer their best opinion about how

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well the child will do in court, but they cannot guarantee what will happen. If the clinician knows what type of information the referring person or agency is seeking from the evaluation, then the clinician can tailor the evaluation to obtain this type of information.

Frequently CPS workers have questions regarding whether a child needs some type of specialized care, such as inpatient hospitalization. In asking for an evaluation, the worker should specify why they think that the child may need such care and ask the clinician for their assessment. Since there are many types of inpatient or residential treatment, it may not be clear whether the worker is concerned that the child is suicidal, depressed, has a substance abuse problem, or needs the structure of a residential setting for a short-term stay. Clarification can assist everyone in insuring the appropriate actions are taken.

### **Preparing Children for the Psychological Exam**

Many children may be unfamiliar with the concept of counseling or seeing an evaluator. The person making the referral to the mental health worker can help the process by describing, in simple terms, who the child is going to meet with and why. Obviously, a young child who is told that they are going to see a doctor who will decide whether they should be sent off-reservation to a hospital will approach their meeting with an evaluator differently than the child who is told they are going to talk with someone who talks to children with problems and helps them to solve their problems. Giving specific examples of the child's problems, such as having nightmares, crying all the time, or not doing well in school, will help the child understand why they are being asked to do something other kids don't have to do, and may decrease additional discomfort to the child. Some children who were traumatized by insensitive medical exams can be terrified of seeing the clinician because they were told they were coming to see "another doctor."

### **What Happens in a Psychological Evaluation?**

A psychological evaluation is not a magical procedure that will answer everyone's questions and give a clear and definite picture of the correct treatment necessary for the child. However, the assessment can provide valuable information as to the child's current level of functioning (including strengths), areas of discomfort, the child's developmental functioning, interpersonal skills, and potential problem areas. The evaluation can give an overall picture of the child's reaction to the crime and help identify what is the *best* way to help this child now.

Psychological evaluations are performed during a single session (usually 50 minutes or longer) or in the course of a several sessions. The evaluator may request to observe the child in different environments and/or interacting with different people. It is one thing to assess a child's relationship with her father based on what you are told and another thing to actually see the child interact with her father. Such assessments will not usually involve the victim and the alleged perpetrator unless precautions to protect the child are in place.

A thorough psychological evaluation will involve several hours of the interviewer's time. A "typical" assessment involving an intelligence test, one or two types of personality testing, and a clinical interview will take four to five hours to perform. Additional time is needed to score or interpret the test and to write a report. These activities may take another three to five hours, on average. Often the person making the referral for the evaluation is working on a strict timeline. It is important to allow the evaluator enough time to perform a good evaluation. Don't expect immediate results or you may be disappointed. A clinical interview or psychosocial history may be obtained much more quickly, possibly involving only two or three hours of the evaluator's time. The person making the referral for the evaluation must identify their timeframe and needs with the person performing the evaluation to help insure the information needed is available in a timely fashion.

### **Overview of Psychological Evaluations**

An evaluation is just that, an assessment, a professional judgment based on limited information. The more information the clinician has, the better their evaluation. Thus, background information, social/family histories, school records, case summaries, and other records can be useful to the evaluator. Psychological tools or formal testing devices can help to provide additional information as well as interaction with the victim will form the basis of the evaluation.

An evaluation can provide direction in deciding the best approach to take in providing treatment for a crime victim. The clinician can help assure the person that others who have had similar experiences share the thoughts and feelings they are having. An evaluation should not be traumatic for the victim. Careful preparation can be helpful. A child sexual abuse victim may be asked to do a lot of things a non-abused child does not have to do: get a special medical exam, talk to CPS, talk to the police, possibly be removed from the home, and go see an evaluator. The evaluator's role can be confusing. The child might think,

"Is this the person who will let me go home; did I do something bad; am I crazy; why do I keep having to talk about what happened?" The evaluator can be the child's ally and child should be helped to understand that role. The evaluator may also be able to testify in court instead of the child.

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## **Psychological Evaluations and the Forensic Interview: Are they the Same?**

One thing an evaluation is *not*, is an investigative interview. Few psychologists are trained to perform legally oriented investigative interviews. When a clinician performs an evaluation they generally accept, as the truth, the information about the case provided to them both by the referring agency and the client. The clinician assumes what they are told is true, at least from the client's point of view. The evaluator may ask leading questions, form assumptions to explore, or even view themselves as the child's advocate (a person who will help them and speak in their defense). An investigator attempts to keep an open mind and may be reserved about whether to believe what the child tells them. An investigator wants to find out whether a crime has occurred, who the suspect(s) may be, and whether a criminal investigation should be started. While some clinicians may be trained to perform investigative interviews, this is not their usual role. If you need an investigative interview, you need something different than a psychological evaluation.

## **The Value of Clinical Evaluations**

The clinical evaluation, whether an interview or a psychological evaluation involving psychological testing, can provide substantial benefits for the person and their family. Information gained from an evaluation can identify areas of strength and weaknesses, potential problem areas, current level of functioning, and treatment recommendations. An evaluation may help the family identify a previously undiagnosed learning disability or psychological problem that may then be addressed. The evaluator can provide information concerning the need for psychological treatment, make recommendations regarding the type of treatment that would be most helpful, and assist in aftercare/discharge planning.

The evaluator can answer questions the victim and the family may have. Some families for example, may have questions regarding impact of abuse on their child's behavior. Family members may be concerned that their loved one is "crazy" because of how they are acting. An evaluation may help reassure the family that the person has no psychological disorder, but is acting in a manner consistent with a person who has been criminally victimized. The family can be referred to on-going counseling for help. A mental health check-up can serve a similar function to a physical health check-up, reassuring the person and their family that there are "no problems." Such reassurances can be very important.

## **Psychological Evaluations and the Court**

The mental health professional also has a role in the court system that can be beneficial to the victim. In fact there are several roles which a mental health professional can play:

- completing victim impact statements,
- assessing credibility of children's testimony,
- educating court personnel about the impact of child sexual abuse,
- preparing children for court,
- assisting the prosecutor in preparing for trial,
- evaluating specific children for their ability to testify in the presence of the alleged perpetrator, and
- functioning as an expert witness.

The mental health professional can play a role in tribal, state, and/or federal court. Jurisdictional issues are the subject of another paper in this series and will not be discussed in detail here. It is important to be aware that mental health professionals can testify as expert witnesses in any type of court; tribal, federal, state, or county.

A mental health professional that has performed a clinical evaluation on a victim can provide information to the court regarding the psychological harm suffered by the person through a victim impact statement. Such information may be requested from the evaluator directly, by the parent/guardian requesting the professional to fill out the statement on a child's behalf, or by supplying information to the parent/guardian who is completing the statement.

While new federal legislation means that a child does not need to be proven competent in order to testify, there are some situations in which a professional may be asked to assess the believability of a child's testimony. For example, in the case of a child who is mentally retarded or may otherwise be deemed incompetent, the clinician may be asked to assess the child's ability to provide accurate information about past events. The professional might also be asked to determine why the child did not tell everything that happened to them at first and why, when the child told what happened to them a second and third time, the descriptions were not consistent.

The professional can also play an important role without ever entering the courtroom by educating court personnel on what happens to a person who has been victimization. An informed court is a better court.

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Judges and prosecutors who understand the psychological impact of crime on victims will be able to evaluate testimony regarding behavioral changes in abused children; the impact of domestic violence on children; the dynamics of family violence; trauma response; the mental health needs of crime victims; the reasons children recant allegations of abuse; and, language development issues which impact a child's ability to answer questions.

### **Court Preparation**

Victim advocates and mental health workers may work with a victim to prepare him/her for court. Which of these people will be responsible for the preparation will depend on the system in place at the local level. Victims who are scared to testify may benefit from relaxation training or anxiety-reduction therapies offered by a mental health worker.

A mental health professional may also serve as an expert witness. In some situations involving child victims, it may be possible for the professional to testify so that the child does not have to. The ability to use information that a child told to an evaluator will depend on the court's rules. However, in many jurisdictions the evaluator will be able to testify as to information that the child told the evaluator in the course of an evaluation or treatment. In addition to this type of testimony, an expert witness may also be able to provide the court with information regarding psychological factors effecting a child such as the child's level of psychological and physical development, post-traumatic stress disorder, dynamics of abuse, behavioral characteristics of abused children, and syndromes associated with abuse (e.g., battered child syndrome, child sexual abuse accommodation syndrome, etc.).

### **Conclusion**

There are many important reasons for requesting a psychological evaluation. A parent or CPS worker may want to know if a child is depressed or suicidal. A prosecutor may want to know what type of harm was done to the victim to justify why the perpetrator should get a long prison sentence. A judge may want to know what type of treatment will help restore the victim to psychological health so the judge can order that treatment, or order the convicted perpetrator to pay money to the victim to cover the victim's therapy expenses.

Mental health professionals, such as psychologists and psychiatrists, often have the skills to perform a psychological evaluation to help answer these types of questions. There are limitations to these

evaluations. A psychological evaluation cannot tell if a crime was committed or who committed the crime. A mental health professional can provide an opinion based on clinical judgment and results of psychological tests. The more knowledge the professional has about the child's culture and beliefs, the more accurate their opinion will be.

Even with these limitations, a psychological evaluation can play an important role in the life of a child victim. The person performing the evaluation can help answer the child's questions, like "am I crazy?" "Is it my fault this happened to me?" The evaluation can serve as a mental health "check-up" to reassure the child and their family that everything is okay or to recommend treatment, if necessary.

Your local mental health professional can provide important information to families and to members of the criminal justice system so that everyone works together to restore psychological health to a child who has been the victim of a crime.

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